

**Letter of Findings: 08-0496
Indiana Gross Retail Tax
For the Year 2007**

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ISSUE

I. Watercraft – Gross Retail Tax.

Authority: IC § 6-2.5-1-1 et seq.; IC § 6-2.5-3-2; IC § 6-2.5-3-2(b); IC § 6-2.5-3-7(a); IC § 6-8.1-5-1(c); IC § 9-31-3-1; *Rhoads v. Ind. Dep't of State Revenue*, 774 N.E.2d 1044 (Ind. Tax Ct. 2002); [45 IAC 15-5-3\(b\)\(8\)](#).

Taxpayer argues that the Department of Revenue erred when it assessed Gross Retail (use) Tax on the purchase price of a watercraft.

STATEMENT OF FACTS

Taxpayer is an Indiana resident who purchased a watercraft in Florida. Taxpayer instructed the dealer that he was exempt from paying Florida sales tax because the boat was destined for Indiana. Thereafter, the Florida Department of Revenue contacted the Indiana Department of Revenue (Department) with information indicating that taxpayer intended to transport the watercraft to Indiana. The Department contacted taxpayer as a routine matter stating that he owed Indiana use tax. Taxpayer's representative responded stating that no tax was due because the watercraft had a "U.S. Coast Guard's Certificate of Documentation, evidencing that the vessel [was] not required to be titled in the state of Indiana." The Department disagreed with taxpayer's assertion in a letter dated December 2007 on the ground the available documentation evidenced the taxpayer's intention to bring the boat into Indiana, that the Coast Guard "Certificate of Documentation," specified that taxpayer lived in Indiana as the boat's "managing owner," and that the boat's "hailing port" was in Indiana. Taxpayer continued to disagree with the Department's analysis and conclusions and submitted a protest to that effect. An administrative hearing was conducted during which taxpayer's representative was provided an opportunity to explain taxpayer's position on the disputed issue. This Letter of Findings results.

I. Watercraft – Gross Retail Tax.

As with any administrative tax protest, it should be noted at the outset that it is the taxpayer who bears the burden of proof. IC § 6-8.1-5-1(c) states in pertinent part that, "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." The Indiana Administrative Code states "[t]he burden of proving that a proposed assessment is incorrect rests with the taxpayer...." [45 IAC 15-5-3\(b\)\(8\)](#).

Indiana imposes a sales tax on retail transactions and a complimentary use tax on tangible personal property that is stored, used, or consumed in the state. IC § 6-2.5-1-1 et seq. The use tax "is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction." IC § 6-2.5-3-2. The use tax is the functional equivalent of sales tax on the acquisition of certain non-exempt tangible personal property that escapes sales tax, usually because the property was acquired in a transaction that occurred outside Indiana. *Rhoads v. Ind. Dep't of State Revenue*, 774 N.E.2d 1044, 1047-48 (Ind. Tax Ct. 2002).

Relevant to the issue raised by taxpayer is the use tax provision found at IC § 6-2.5-3-2(b) which states that, "The use tax is imposed on the storage, use, or consumption of a vehicle, an aircraft, or a watercraft, if the vehicle, aircraft, or watercraft... is required to be titled, licensed, or registered by this state for use in Indiana." (Emphasis added).

However, taxpayer argues that it was not necessary to register his watercraft in Indiana because it was not primarily used within this state. The law states that, "[E]very motorboat principally used on the waters of Indiana must be registered [with the Bureau of Motor Vehicles] and numbered." IC § 9-31-3-1. In an affidavit accompanying the taxpayer's initial protest letter, taxpayer states that his watercraft is not used "principally on the waters of Indiana" and that the "primary use of the Motorboat occurs in states other than Indiana."

Essentially, taxpayer's argument is that the watercraft is not primarily used in Indiana, that it is not required to be registered in Indiana, and that use tax is not due because no taxable Indiana "use" occurred.

However, accepting taxpayer's conclusion requires the accepting taxpayer's position that the watercraft does not have to be registered in any state. Taxpayer maintains that during the approximately one year that he owned this particular watercraft (he has since traded this particular boat for another) he was never able to decide on a state in which the boat should be registered. Taxpayer argues that the watercraft was randomly used in Indiana, Kentucky, Ohio, and other states but was never primarily used anywhere. Accepting taxpayer's logic, this particular watercraft did not need to ever be registered in any state and no sales or use tax was ever owed any

state; taxpayer acquired a tax free, "nowhere" boat.

At the time taxpayer purchased the boat in Florida, he claimed an exemption from Florida sales tax on the ground that the watercraft would be moved within 30 days from Florida to Indiana and titled and used in Indiana. In addition, the watercraft's Coast Guard Certificate of Documentation specifies that taxpayer lived in Indiana, that the watercraft's "hailing port," was in Indiana, and that the Indiana taxpayer was the "managing owner" of this particular boat.

The law presumes that an item of tangible personal property – such as a watercraft – acquired for delivery within Indiana is subject to tax. IC § 6-2.5-3-7(a) states that, "A person who acquires tangible personal property from a retail merchant for delivery in Indiana is presumed to have acquired the property for storage, use, or consumption in Indiana, unless the personal or the retail merchant can produce evidence to rebut that presumption." The Department is unable to agree that taxpayer has rebutted the presumption set out in IC § 6-2.5-3-7(a) or that taxpayer has met his burden of demonstrating that the proposed assessment of use tax is incorrect pursuant to IC § 6-8.1-5-1(c). Although the Department agrees that an Indiana resident can acquire a watercraft which is not primarily used within the resident's own home state, the Department is not prepared to agree that an Indiana resident can acquire a watercraft and never use that watercraft anywhere. Taxpayer avoided paying Florida sales tax by claiming that the watercraft was destined to be used outside Florida and specifically indicating that the watercraft would be licensed and used in Indiana. Perhaps taxpayer's plans changed after the Florida transaction took place, but it would seem intuitive that the watercraft must have been "used" somewhere. Taxpayer's basic contention is that the watercraft moved from place to place and from state-to-state during the time he owned the watercraft such that the watercraft was never used anywhere; the Department must disagree and conclude that the use tax was correctly assessed.

FINDING

Taxpayer's protest is respectfully denied.

Posted: 12/17/2008 by Legislative Services Agency
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